

XII-189 / (Jail)
C. J. P. R. 11/94/2,000



High Court of Madhya Pradesh
JABALPUR.
29 OCT 1998
Reg. No. 224
Recent Clerk

APPEAL OF PRISONER

No...1868..... Name ...प्यारी बाई.....
Father's name पति सुकलाल साहू निवासी ग्राम बन्हरदी, धाबा लाल बाग.....
Residence जिला राजनी दगाव मोगु Age 25 वर्ष.....
Sentenced to आजीवन कारावास जु0-500/- On 25/08/98.....
Under section 302 भा.द.वि...... by माननीय अवर सत्र न्यायाधीश, राजनी दगाव
मोगु

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement
- 2 Date on which copy received 06/10/98.....
- 3 Date on which Appeal sent 9/10/98.....
- 4 Whether the prisoner wishes to be represented or not - Yes / No

No...1868..... Name प्यारी बाई पति सुकलाल साहू.....

Confined in केन्द्रीय..... Jail रा.पु. मोगु.....

No..... 316 / वि.वि. 4/98 Dated 9/10/1998.....

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अतिरिक्त पंजीयक महोदय,
माननीय उच्च न्यायालय मोगु जबलपुर ।
together which a copy of judgement or order passed in the case for favour of trans-
mission to the proper Appellate Court.

संलग्न:- सत्र प्रकरण क्रमांक-61/98 की
सत्यापित प्रति ।

9/10/98
Superintendent,
Central Jail Raipur. (M P.)

Date of receipt in... office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199.....

Forwarded to the

Date of receipt in Appellate Court

(P. T. O.)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 2575/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH: HON. SHRI V.K.SHRIVASTAVA & HON. SHRI DHIRENDRA MISHRA, JJ</u> <u>Criminal Appeal No. 2575 of 1998</u> <u>Appellant</u> Pyari Bai <u>Respondent</u> State of M.P. Ms. Minu Banerjee, learned counsel for the appellant. Shri Ravindra Agrawal, learned P.L. for the State. <u>ORAL JUDGMENT</u> <u>(23/03/2006)</u> <u>Per Dhirendra Mishra, J</u> The accused/appellant has preferred this appeal under Section 374(2) of the Cr.P.C. as she stands convicted under Section 302 of the IPC and sentenced to undergo imprisonment for life and pay fine of Rs. 500/- and in default of payment of fine to further undergo RI for 15 days by the learned Additional Sessions Judge, Rajnandgaon vide order dated 25.08.1998 passed in S.T. No. 61/98. 2. Case of the prosecution, in brief is that on 10.01.98 at about 18.00 hrs. one Bhukau of village Banhardi gave information in the police station Laal Bagh, Rajnandgaon to the effect that in the morning at about 10 O'clock of that day both the wives of his son Sukhlal had gone to the field for weeding <i>Kodau</i>. In the afternoon at about 3.30 p.m. Kanwaar Gond came to his house and informed that his daughter in law Shanti Bai hanged	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 2575/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	herself in the field whereupon they went towards the field where number of villagers gathered and they saw Shanti Bai hanging with the help of nylon rope in a nearby <i>Babool</i> tree situated on the bund and his second daughter in law Pyari Bai was sitting on the road weeping. However on enquiry she did not state anything. After registering the merg intimation, Dehati Nalishi was registered vide Ex.P-10. On the basis of merg intimation and Dehati Nalishi, FIR (Crime No. 5/98) was registered on 11.01.98 vide Ex.P-11. On receiving the information, the police officer proceeded for investigation and conducted the inquest over the dead body of deceased Shanti Bai in the presence of witnesses. The inquest report is Ex.P.-3. The hair present on the blouse of the deceased were seized vide Ex.P.-4, the broken bangles were taken into possession vide Ex.P-5 and the hair was also seized from near the dead body vide Ex.P.-6 and Ex.P-7. Two sickles lying on the place of occurrence were also seized vide Ex.P-8. One pair of <i>Chappal</i> lying on the place of incident was seized vide Ex.P-9. The dead body of deceased Shanti Bai was sent for post mortem examination to Government Hospital, Rajnandgaon vide Ex.P-12 where Dr. V.P.Maheshwar (P.W.-11) conducted the postmortem over the body of deceased Shanti Bai and submitted his report vide Ex.P-47. The doctor after conducting the post mortem noticed that : i. the tongue of the deceased was protruded and bitten between teeth and multiple abrasions present in the left side of the chest and injury between 9th and 11th rib. ii. there were superficial abrasions in the upper portion of the left hand, right knee.	

मामला क्रमांक

C.A. No. 251/98 सन 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	iii. Oblique ligature mark was present over the neck which was broken on the back side and was not visible. iv. Ligature mark was slightly depressed and correspond to the width of the rope $\frac{1}{2}$ cm. and the width was the same as the width of the rope. v. On dissection he found ligature mark present between thyroid cartilage and chin. vi. He also found fracture of cervical vertebra. The trachea congested and froth was present in small quantity. vii. The right and left lungs and Parion Paracsium were also found congested. viii. The left chamber of the heart was empty and right chamber was full of blood. Undigested food was present in the stomach. He opined that the cause of death of Shanti Bai was strangulation and the death occurred within 24 to 36 hours from the time of the post mortem examination. He further opined that the death was homicidal in nature though no definite opinion could be given and that all the injuries found on the body of deceased Shanti Bai were ante-mortem in nature.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 2575/98/सं 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
3.	The photographs of the deceased were taken vide Ex.P.32 to Ex.P.-44. The accused was arrested on 12.01.98 vide arrest memo of Ex.P-14. Sample of the hair of accused was also taken vide Ex.P-15. After completing the investigation charge sheet under Section 302 of the IPC was filed in the Court of Judicial Magistrate First Class, Rajnandgaon who in turn committed the case to the Sessions Judge, Rajnandgaon and the same was received by the learned Additional Sessions Judge on transfer for trial. The trial Court framed the charges under Section 302 of the IPC against the accused. The accused/appellant abjured her guilt.	
4.	The prosecution in order to establish its case examined thirteen witnesses in all. Statement of the accused/appellant was also recorded thereafter. The appellant denied the circumstances appearing against her in the prosecution case and stated that she has been falsely implicated in the case.	
5.	The Court below after hearing the counsel for the respective parties convicted and sentenced the accused/appellant as mentioned above.	
6.	Homicidal death of the deceased Shanti Bai is not in dispute. Even otherwise taking into consideration the statement of P.W.-11 Dr. V.P.Maheshwar who performed the autopsy over the body of the deceased and found injuries as described above and has opined that the cause of death was due to asphyxia on account of strangulation, the homicidal death of the deceased is established.	
7.	Learned counsel for the accused/appellant submits that there is no eye witness to the incident and the case of the prosecution hinges on	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 2578/98 सन 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	circumstantial evidence. She further contends that the Court below has placed its reliance heavily on the circumstances of the last scene and alleged extra judicial confession made by the appellant before P.W.-2, 3, 5 & 6. However she points out that though in the statement of the above witnesses the appellant allegedly confessed the guilt but there are number of circumstances which are ignored by the trial Court. It is further argued that it was not humanly possible for the appellant to strangle a woman of her equal age and this aspect has also been ignored by the trial Court. 8. On the other hand learned counsel for the State supports the judgment of the trial Court. 9. We have heard learned counsel for the parties. 10. It is not in dispute that there is no eye witness to the incident and the case of the prosecution rests on circumstantial evidence. It is settled law that in order to convict the accused on the basis of circumstantial evidence the prosecution is required to establish that such evidence satisfy the following tests:- i. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; ii. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;	

(20)

मामला क्रमांक G.A. No. 2515/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	iii. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and iv. the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.	
11.	In the instant case, the circumstances relied upon by the prosecution against the accused may be summarized as under : i) motive; ii) the circumstances of the last scene as the appellant and the deceased Shanti Bai proceeded to the field at about 10.00 a.m. on the date of incident; iii) the conduct of the appellant and iv) Extra judicial confession made by the appellant before witnesses P.W.-2, 3, 5 & 6. To establish the first circumstance i.e. motive, the prosecution has examined P.W.-1 Bhukau father in law of the deceased who has stated	

मामला क्रमांक

C.A. No. 2515/98
सं. 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	that his son Sukhlal has two wives and both of them used to quarrel. He further stated that because of sickness Shanti Bai was not able to perform agricultural work and therefore his son married Pyari Bai. Shanti Bai and Pyari Bai used to quarrel in the name of work and they had quarreled two days prior to the date of incident also.	
12.	P.W.-6 Sukhlal, husband of the deceased has also stated that at times there were differences between the two wives and whenever he slept in the room of the deceased, Pyari Bai used to raise dispute. However in our considered opinion these circumstances may not be considered to be a strong motive to commit the offence of murder.	
13.	The second circumstance is that of the last seen. To establish this circumstance the prosecution relying upon the statement of P.W.-1 Bhikau who has stated that on the date of incident the deceased and the appellant went to the field to work at 10.00 a.m. and used to return in the evening. This statement of P.W.-1 has not been disputed in the cross examination. On the contrary in her statement under Section 313 of the Cr.P.C., in reply to question four that she went with Shanti Bai to the field at 10.00 a.m. on the date of incident she replied - in affirmative and thereafter the dead body of Shanti Bai was found at about 3.30 p.m. in the field. There is no suggestion on behalf of the accused to the witnesses that after proceeding with deceased Shanti Bai she left her company and there is no evidence available on record that after departing for work Shanti Bai was seen with any other person than the accused and thus from the evidence available on record we are of the considered opinion	

(22)

मामला क्रमांक C.A.N. 2515/198 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 8 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	that the prosecution has ~~not~~ been able to establish the circumstance of that the accused was last scene with the deceased while she was alive.	
14.	The third circumstance is that of the conduct of the appellant. P.W.-1 Bhikau Ram has stated that on the date of incident both his daughter in laws went to the field. However at about 3.00 p.m. his daughter in law Pyari Bai returned alone and started weeping and did not tell anything. P.W.-2 Meghraj Sahu, Sarpanch of the village has stated that they met Pyari Bai on the way. However when they asked as to how it happened she pleaded ignorance and stated that she was in the other field and plucking vegetables. When they asked her about the plucked vegetables she tried to explain that it fell. Similar is the statement of P.W.-3 Loku Das and P.W.-4 Yograj @ Joga. In the circumstance, we are of the considered opinion that the aforesaid conduct of the appellant is an incriminating circumstance.	
15.	Similar is the statement of P.W.-3 Loku Das who has stated in paragraph four of his statement that accused/appellant confessed that she killed Shanti Bai by pressing her neck. The confession is also made by the appellant before P.W.-5 Bhuki Bai and P.W.-6 Sukhlal. The defence has not been able to elicit anything in their cross examination to make their version unreliable or untrustworthy and therefore we are of the considered opinion that the appellant immediately after the incident confessed her guilt before the above witnesses voluntarily. Apart from the above circumstance, the material circumstance against the appellant is that immediately after the incident, on being asked by P.W.-2 Meghraj Sahu	

मामला क्रमांक C.A. No. 2515/98 सन 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -१-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	she stated that she has committed mistake and she has murdered Shanti Bai.	
16.	On the basis of the aforesaid analysis and as per the settled law we are of the considered opinion that the prosecution has been able to establish all the circumstances relied upon for establishing the guilt of the accused/appellant in the instant case and the Court below has not committed any illegality or infirmity in holding the appellant guilty under Section 302 of the IPC and sentencing her with life imprisonment.	
17.	In view of the above, the appeal is devoid of substance and the same deserves to be dismissed and is accordingly dismissed.	
	Sd/- V.K. Shrivatava Judge	Sd/- Dhirendra Mishra Judge

3/3/06
13/4/06